

## APPENDIX C

### CONTRACT MODIFICATIONS OTHER CLAUSES

1. Default Clause - Weather Modification. A weather modification is written under the Default clause where it states that if the contractor refuses or fails to prosecute the work within the time specified in the contract, including any extensions, the Government may terminate his right to proceed with the work. Except, the contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause, if the delay in completing the work arises from (among other things) unusually severe weather. This exception provides a justification for a time extension when the actual delays exceed the delays that would be caused by normal weather.

a. Section 00800 Special Contract requirements, paragraph entitled “Time Extensions for Unusually Severe Weather” tells the contractor how time extensions will be handled for the unusually severe weather. First, the weather experienced at the contract site must be more severe than the adverse weather anticipated during any given month. Besides the common rain and cold temperatures, other extreme weather events such as tornados, blizzards, floods, etc., may also qualify. Second, the unusually severe weather must actually cause a delay to the completion of the project and the delay must be beyond the control and without the fault or negligence of the contractor. Third, actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the contractor's scheduled workday. If these three conditions are met a calculation can be made to come up with the allowable time extension. Each month is handled separately.

b. This paragraph, “Time Extensions for Unusually Severe Weather”, contains a month-by-month tabulation of the adverse weather workdays that can be anticipated and will be used for the duration of the contract. The actual weather caused delays for each month that delay at least 50 percent of the work force scheduled to work on a critical activity would be subtracted from the anticipated delays found in the special clause tabulation. This will produce the number of workdays delayed by unusually severe weather. This will be multiplied by the ratio of the number of calendar days (7) in a week to the number of scheduled workdays in a week (usually 5) to arrive at the number of calendar days the contract will be extended. It is important that the PNM, or support documents included in the modification package, detail the actual adverse weather days.

c. There is no provision for payment under this clause nor is there allowability for payment of costs for any of the items discussed in this clause, including weather. The Government does not pay any costs incurred for any conditions covered under the default clause.

2. Procedure - Weather Modifications

a. Field Engineer (Initiator).

- (1) Prepare Weather evaluation memorandum.
- (2) Notify the Project Manager
- (3) Send information to Area Office Engineer.

b. Field Engineer (Preparer).

- (1) Get Mod number.
- (2) Review RE Memorandum.

c. Field Engineer & Contractor (Negotiators).

- (1) Negotiate.
- (2) Settle weather time.

d. Field Engineer (Executor).

- (1) Write PNM.
- (2) Put mod package together.
- (3) Prepare Standard Form 30 for ACO signature.\*

e. ACO or CO (Signatories).

- (1) Sign Form 30.\*\*
- (2) Send modification to contractor for signature.
- (3) Copy-furnish ACO signed modification to contract holders on the project delivery team.

f. Contractor (Acknowledger).

(1) Sign Form 30.

(2) Return signed Form 30 to Area.

\* There are several options for preparing a GSA Standard Form 30, Amendment of Solicitation / Modification of Contract. The field office may use whatever method is most administratively convenient. However, all SF30 documents must be recorded in construction systems and the Standard Procurement System (SPS).

\*\* The SF30 may be signed electronically in SPS or by wet signature on the original document – both forms are acceptable.

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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE J	PAGE OF PAGES 1   1
2. AMENDMENT/MODIFICATION NO. A00020	3. EFFECTIVE DATE 29-Apr-2003	4. REQUISITION/PURCHASE REQ. NO. W59XQG-1067-3568		5. PROJECT NO.(If applicable)
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 631 SAINT ANNE S RAPID CITY SD 57701	CODE DACA45	7. ADMINISTERED BY (If other than item 6) U.S. ARMY CORPS OF ENGINEERS, OMAHA DIST CONTRACTING DIVISION 215 NORTH 17TH STREET OMAHA NE 68102-4978		CODE DACA45
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) CADELL CONSTRUCTION CO INC DAN BRANTLEY 2700 LAGOON PARK DRIVE MONTGOMERY AL 36109			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			X	10A. MOD. OF CONTRACT/ORDER NO. DACA45-01-C-0002
			X	10B. DATED (SEE ITEM 13) 13-Apr-2001
CODE 0CYV6			FACILITY CODE	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
X	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "DEFAULT"			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).			
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:			
	D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>0</u> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00024 Minuteman III Missile Service Complex & Command and Control Support Facility F.E. Warren AFB, Wyoming Pursuant to the clause of this contract entitled, "DEFAULT", the contract completion schedule is changed as indicated below because of unusually severe weather. It has been determined that the delay in performance of the contract work was due to unusually severe weather during March 2003. It is understood that the contract time is increased eight (8) calendar days.				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) MARK A MAILANDER / ADMINISTRATIVE CONTRACTING OFF TEL: (605)341-3169 EMAIL: mark.a.mailander@usace.army.mil		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Mark A Mailander</u> (Signature of Contracting Officer)	16C. DATE SIGNED 29-Apr-2003	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-1

**PRICE NEGOTIATIONS MEMORANDUM**

Page 1 of 1

Project <b>MM III Missile Service Complex and Command &amp; Control Support Fac. F.E.W. AFB, WY</b>	Contract Number <b>DACA45-01-C-0002</b>	Modification <b>R00024</b>
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**NECESSITY FOR THE CHANGE:**

This modification is required due to a **"Excusable Delay for No Fault"**, RMS reason code "E", and is made pursuant to contract clause "DEFAULT (FIXED-PRICE CONSTRUCTION)" due to weather determined to be beyond the control and without the fault or negligence of both the contractor and the subcontractors or suppliers. By definition, this is considered to be an uncontrollable modification for reporting purposes.

High winds and/or snow/rain prevented critical activities of SSMR system, the insulated exterior metal wall panels, and interior slab on grade because the roof is not completed. Critical work could not be performed on 4-6, 12, 17-20, 24, and 26-27 March 2003. See attached monthly weather summary.

**RECORD OF NEGOTIATIONS:**

	<u>March 2003</u>
1 Actual adverse weather work days	11
2 Anticipated adverse weather work days	5
3 Total actual adverse weather work days to be considered for time extension (Item 1 - Item 2)	6
4 Contractor's scheduled work week in days	5
5 Work days converted to calendar days (Item 3 x 7 / Item 4, rounded to nearest whole number)	8

Under Contract Clause "DEFAULT" (Fixed-Price Construction), it has been determined that the contract price remains unchanged, and the contract time is increased eight (8) calendar days for adverse weather during March 2003.

Date: <b>28-Apr-2003</b>	Name & Title of Gov't Rep: <b>PATTY VAUGHN</b> Civil EngineeringTech	SIGNATURE:
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Figure C-2

3. Differing Site Conditions (DSC). This clause states that the contractor shall notify the Government, in writing, of any encountered subsurface or hidden physical condition that differ materially from those indicated in the contract, or unknown physical conditions which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

a. If, after an investigation by the contracting officer's representative, it is found to be, in fact, a differing site condition, a modification will be written to compensate the contractor for all costs and time (if necessary) caused by this condition. Nearly all the DSC modifications will have to be treated as a two-part situation to avoid unnecessary delays to the project. The example used shows how, if the contractor can submit a proposal quickly, the change can be forward priced and settled and a two-part modification can be avoided.

b. It is important to know that a differing site condition can be either of two categories: either a subsurface or hidden condition that is different than what is indicated in the contract (termed a Category I condition), or a condition that is different from what would normally be expected and encountered (termed a Category II condition). If either of these two situations exists, then the corrective measures should be formalized as a contract modification. The DSC procedure was developed to cover either category condition that could not be considered an error on the designer's part, and could not be corrected by changing the contract drawings. Therefore, acceptable standard practice is to write a construction contract modification referencing the differing site condition clause when corrective measures to either of the two categories can be readily understood without changing the contract drawings.

c. When it is necessary to change the contract drawings to identify corrective actions it is acceptable practice to write the modification referencing the changes clause, and categorize the modification as a construction change. In any event, whether a construction contract modification is categorized and executed as a DSC, or written and categorized as a construction change, the resulting allowable costs and the modification process are the same.

d. DSC's typically arise in new construction when there is a below ground condition that is different of unexpected. They can also arise, however, in projects that involve alteration or renovation. In these cases, floors, walls, concrete, and other construction cover up the condition. Whether below ground or behind a wall, the DSC must be in existence prior to contract award.

4. Procedure - Differing Site Conditions Modification

a. Field Engineer (Initiator).

- (1) Receive notice of differing site conditions from contractor.
- (2) Notify the Project Manager
- (3) Prepare Mod description and budget estimate.
- (4) Send information to Area Office Engineer.

b. Field Engineer (Preparer).

- (1) Get Mod number.
- (2) Initiate PR&C and create obligation equal to estimated costs.
- (3) Prepare SF 30. \*
- (4) ACO sign and send SF 30 to contractor (NTP).\*\*
- (5) Prepare independent GE.

c. Contractor (Proposer).

- (1) Receive SF 30, begin mod work.
- (2) Prepare cost and schedule proposal.
- (3) Submit proposals to Area Engineer.

d. Field Engineer (Reviewer).

- (1) Review and compare proposal to GE (spreadsheet).
- (2) Prepare Technical Analysis and revise GE (if necessary).
- (3) Prepare Negotiation Objectives.

e. Field Engineer & Contractor (Negotiators).

- (1) Negotiate
- (2) Settle cost and time.
- (3) Sign MOU.

f. Field Engineer (Executor).

- (1) Commit additional funds as necessary.
- (2) Write PNM.
- (3) Put mod package together.
- (4) Prepare a separate modification SF 30\* referencing the initial modification for ACO signature or prepare and send mod package to Contract Review Board and CO for signature on final Supplement.

g. ACO or CO (Signatories).

- (1) Sign SF 30, final priced modification.\*\*
- (2) Approve obligation of funds.
- (3) Send final Supplement to contractor for signature.
- (3) Copy-furnish ACO signed modification to contract holders on the project delivery team.

h. Contractor (Acknowledger).

- (1) Sign SF 30.
- (2) Return signed SF 30 to Area or District.

\* There are several options for preparing a GSA Standard Form 30, Amendment of Solicitation / Modification of Contract. The field office may use whatever method is most administratively convenient. However, all SF30 documents must be recorded in construction systems and the



Standard Procurement System (SPS).

\*\* The SF30 may be signed electronically in SPS or by wet signature on the original document – both forms are acceptable.

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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J	PAGE OF PAGES 1   2
2. AMENDMENT/MODIFICATION NO. A00007		3. EFFECTIVE DATE 16-May-2003		4. REQUISITION/PURCHASE REQ. NO. W59XQG21968708	
5. PROJECT NO.(If applicable) DACA45-02-R-0021					
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 631 SAINT ANNE S RAPID CITY SD 57701		CODE DACA45		7. ADMINISTERED BY (If other than item 6) BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 631 SAINT ANNE S RAPID CITY SD 57701	
CODE		FACILITY CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) WEIS BUILDERS INC BRAD SCHOOPNER 7645 LYNDALE AVE SOUTH MINNEAPOLIS MN 55423				9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
				X 10A. MOD. OF CONTRACT/ORDER NO. DACA45-02-C-0020	
				X 10B. DATED (SEE ITEM 13) 12-Aug-2002	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
X A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "DIFFERING SITE CONDITIONS"					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return 0 copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00012  Replace Family Housing - Phase 1 (FY02) & Phase 2 (FY03) Ellsworth AFB, South Dakota  The contractor shall furnish all plant, labor, and material, and perform all work necessary to accomplish the following described work:  CONTINUED ON PAGE 2  Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) MARK A MAILANDER / ADMINISTRATIVE CONTRACTING OFF TEL: (605)341-3169 EMAIL: mark.a.mailander@usace.army.mil		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY <i>Mark Mailander</i> (Signature of Contracting Officer)	
				16C. DATE SIGNED 16-May-2003	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-3

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SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

SECTION 00010 - SOLICITATION CONTRACT FORM

The total cost of this contract was increased by \$574.00 from \$16,753,338.00 to \$16,753,912.00.

57 NA 2002 0740.0000 G6 2002 08 8061 71100000000 25066 BAAN-AWX BJBGKJ2B100 SA is increased by \$574.00.

(End of Summary of Changes)

**The following items are applicable to this modification:**

DESCRIPTION OF CHANGE

R00012

1. **SCOPE:** Contaminated soil removal.

2. **SPECIFICATION CHANGES:** None.

3. **DRAWING CHANGES (Revised but not Reissued):** Drawing AF 711-15-01, Sheet CO.1, Building/Site Notes. Add new Note 8,

“8. At 5404 Vine St. (new building 215 Vine St, garage area) excavate fuel contaminated soil and dispose of at the City of Rapid City approved land fill. Contact Dan Roth at 394-4197. Testing on site to be performed by the Air Force while excavation is in process. Contact Dave Goodsell or Larry Amburn at 385-6616 or 385-2684.”

Due to the changes described herein, the contract price will be adjusted and is designated for payment purposes as follows:

<u>Mod</u> <u>Item No.</u>	<u>Description</u>	<u>Unit</u> <u>Price</u>	<u>Amount</u> <u>Increase</u>
12M-1	Contaminated soil removal	Job L.S.	\$574.00

The contract time remains unchanged.

It is understood and agreed that the adjustment to the contract price and time for performance set forth herein is inclusive of all costs and time incurred by the contractor as a consequence of this modification individually and collectively with other modifications including, but not limited to, those for delay, impact, inefficiency and extended field and home office overhead.

Figure C-3 (Cont'd.)

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**NECESSITY FOR THE CHANGE**

Replace Family Housing Phase 1 (FY02) & Phase 2 (FY03)  
Ellsworth AFB, SD

**Contract DACA45-02-C-0020**  
**Modification R00012**  
**Contaminated soil removal**

Weis Builders, Inc.  
San Diego, CA

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This modification is made pursuant to contract clause “**Differing Site Conditions not Readily Identifiable by Site Investigation**”, RMS reason code “7”, and is made pursuant to contract clause “DIFFERING SITE CONDITIONS.” By definition, this is considered to be a uncontrollable modification for reporting purposes.

The area south of new unit 215 Vine St had a noticeable fuel odor detected on January 31, 2003. Base Environmental (Mark Howard) was notified by telephone and the Base BioMed personnel came to the site and collected a soil sample. The test results received on February 6, 2003 indicate between 350 & 400 TPH Diesel. Base Environmental requests that the contaminated soil be removed and transported to the Rapid City Landfill.

Coordination: David Goodsell and Larry Amburn 28th CES Env :Date: February 6, 2003.

SAMPLE

Figure C-4

**PROPOSAL ANALYSIS**

Replace Family Housing Phase 1 (FY02) & Phase 2 (FY03)  
Ellsworth AFB, SD

**Contract DACA45-02-C-0020**  
**Modification R00012**  
**Contaminated soil removal**

Weis Builders, Inc.  
San Diego, CA

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The contractor was sent a request for proposal on February 6, 2003, with a proposal due date of February 21, 2003.

The contractor submitted his proposal, via fax, on May 8, 2003. The amount of the contractor's proposal was \$574.00 increase, with no additional contract time.

The contractor's proposal was reviewed in detail by the undersigned and found to be fair and reasonable. This review consisted of checking each proposed work item to verify that it was a requirement of the modification scope. Also, the proposal was checked for reasonableness, omissions and/or duplications, math errors, takeoff quantity errors, unit prices and markups. Adequate cost and pricing data was provided. This review resulted in finding that the contractor's proposal was fair and reasonable.

**TIME**

The contractor did not request any additional contract time. A thorough review of the contractor's current network analysis system (NAS) shows that the work covered by this modification does not affect the contract completion, therefore, no change in contract time is justified.

The contractor will submit a subnet for review prior to his next NAS update after the conclusion of negotiations.

Date: May 9, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-4 (Cont'd.)

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**PRENEGOTIATION OBJECTIVES MEMORANDUM**  
Replace Family Housing Phase 1 (FY02) & Phase 2 (FY03)  
Ellsworth AFB, SD

**Contract DACA45-02-C-0020**  
**Modification R00012**  
**Contaminated soil removal**

Weis Builders, Inc.  
San Diego, CA

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The following negotiation objectives follow the same order as they were presented in the Proposal Analysis.

Accept the contractor's proposal of \$574.00 increase as fair and reasonable.

**TIME**

No change in contract time was requested or is justified.

SAMPLE

Date: May 9, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-4 (Cont'd.)

**PRICE NEGOTIATIONS MEMORANDUM**

Replace Family Housing Phase 1 (FY02) & Phase 2 (FY03)  
Ellsworth AFB, SD  
**Contract DACA45-02-C-0020**  
**Modification R00012**  
**Contaminated soil removal**  
Weis Builders, Inc.  
San Diego, CA

All negotiations were held via telephone and concluded on May 9, 2003. The parties in the negotiations were:

<u>Organization/Location</u>	<u>Name</u>	<u>Title</u>	<u>Phone No.</u>
Weis Builders, Inc. San Diego, CA	Martin O'Brien	Senior Project Manager	(858)675-2060
Corps of Engineers Rapid City, SD	Bret Budd	Civil Engineer	(605)341-3169

The contractor's proposal of \$574.00 increase was reviewed in detail and accepted as fair and reasonable.

**TIME**

The contractor did not request any additional contract time. A thorough review of the contractor's current network analysis system (NAS) shows that the work covered by this modification does not affect the contract completion, therefore, no change in contract time is justified.

The contractor will submit a subnet for review prior to his next NAS update after the conclusion of negotiations.

**MEMORANDUM OF UNDERSTANDING**

At the conclusion of negotiations on May 9, 2003, a memorandum of understanding was prepared and signed by the Government's negotiator, Bret Budd. This memorandum was faxed to the contractor. The contractor's Senior Project Manager, Martin O'Brien, signed the MOU and faxed it back to Black Hills Area Office on May 9, 2003.

**THE NEGOTIATED SETTLEMENT.**

As the price of this modification is less than \$100,000, preparation of a Government estimate is waived pursuant to EFAR 36.203. Taking into consideration the scope and scheduling of the work, current pricing on labor and materials and other pertinent factors, the final settled price of \$574.00 increase and no change in contract time, is considered fair and reasonable.

Date: May 9, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-4(Cont'd.)

5. Suspension of Work. Under the "Suspension of Work" clause the Government may order a suspension, delay or interruption of the work for a period of time that is deemed appropriate for its convenience. If this suspension, delay or interruption is for an unreasonable period of time and was not for any other cause, including the fault or negligence of the contractor, an adjustment shall be made for any increase in cost caused by the Government's action. Cost does not include profit.

a. The FAR Clause states that an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) and the contract modified in writing accordingly. The "Suspension of Work" clause is written to coordinate its text with that of the "Changes" clause. The second sentence of the clause specifically indicates that an adjustment is not made under this clause in any instance where "an equitable adjustment is provided for or excluded under any other provision" of the contract. Accordingly, where a claim for delay expense is compensable under the "Changes" clause or any other applicable clause, an adjustment will be made using that clause in preference to the "Suspension of Work" clause. Furthermore, where an adjustment of both price and time are made for delays, and the price adjustment is to be made under the "Suspension of Work" clause, the time adjustment shall be accomplished under the "Default" clause.

b. Suspension of work and delay have nearly the same contractual definition. If the contractor is delayed in the performance of his work, other than by a requirement for additional work, he is suspended. The cost and time associated with that delay or suspension is covered with a modification under the suspension of work clause.

c. The common suspensions (or partial suspensions or delays) are for failure on the Government's part to meet its contractual obligations in the time specified. Such include shop drawing review, response to questions (RFI's), access to the site, delivery of GFE, and the like. As in any other request for adjustment the contractor must show how he is being damaged or delayed as a result of the suspensions.

d. Only the C.O. has authority to formally issue a suspension of work notice to the contractor. If a suspension is necessary, the field office should request this action through CENWO-CD-C for coordination of the actual notice with the C.O.



6. Procedure - Suspension of Work Modifications

a. Field Engineer (Initiator).

- (1) Receive notice of suspension of work from contractor, or receive copy of suspension of work notice from the C.O.
- (2) Notify the Project Manager.
- (3) Prepare memorandum detailing the suspension.
- (4) Send information to Area Office Engineer.

b. Field Engineer (Preparer).

- (1) Get Mod number.
- (2) Prepare independent GE.
- (3) Budget estimated costs.

c. Contractor (Proposer).

- (1) Prepare cost proposal.
- (2) Prepare schedule proposal.
- (3) Submit proposals to Area Engineer.

d. Field Engineer (Reviewer).

- (1) Review Proposal.
- (2) Compare proposal to GE (spreadsheet).
- (3) Do Technical Analysis.
- (4) Revise GE (if necessary).

(5) Prepare Negotiation Objectives.

e. Field Engineer & Contractor (Negotiators).

(1) Negotiate.

(2) Settle cost and time.

(3) Sign MOU.

f. Field Engineer (Executor).

(1) Commit funds.

(2) Write PNM.

(3) Put mod package together.

(4) Prepare final SF30 for ACO signature\* or prepare and send mod package to Contract Review Board and CO for signature.

g. ACO or CO (Signatories).

(1) Sign SF30.\*\*

(2) Obligate funds.

(3) Send SF30 to the contractor for signature.

(4) Copy-furnish ACO signed modification to contract holders on the project delivery team.

h. Contractor (Acknowledger).

(1) Sign SF30.

(2) Return signed SF30 to Area or District.

\* There are several options for preparing a GSA Standard Form 30, Amendment of Solicitation / Modification of Contract. The field office may use whatever method is most administratively convenient. However, all SF30 documents must be recorded in construction systems and the Standard Procurement System (SPS).

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\*\* The SF30 may be signed electronically in SPS or by wet signature on the original document – both forms are acceptable.

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1 Sep 2003

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE <b>J</b>	PAGE OF PAGES <b>1   2</b>
2. AMENDMENT/MODIFICATION NO. <b>A00008</b>	3. EFFECTIVE DATE <b>04-Oct-2001</b>	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA GENWO-CD-BH 2100 S SEVENTH S RAPID CITY SD 57701	CODE <b>DACA45</b>	7. ADMINISTERED BY (If other than item 6) <b>See Item 6</b>		
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) R&R JOINT VENTURE RONALD R. LA COUNT PO BOX 2045 MINOT ND 58702		9A. AMENDMENT OF SOLICITATION NO.		
		9B. DATED (SEE ITEM 11)		
		X 10A. MOD. OF CONTRACT/ORDER NO. DACA05-01-C-0002		
		X 10B. DATED (SEE ITEM 13) 30-Apr-2001		
CODE <b>1SVW4</b>		FACILITY CODE		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
X	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "DEFAULT"			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).			
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:			
	D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00015  Family Housing Replacement Minot AFB, North Dakota  The contractor shall furnish all plant, labor, and material, and perform all work necessary to accomplish the following described work:  CONTINUED ON PAGE 2				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) MARK A MAILANDER / ADMINISTRATIVE CONTRACTING OFF		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA  BY _____ (Signature of Contracting Officer)	16C. DATE SIGNED  04-Oct-2001	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-5

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

R00015

This modification increases the performance period by five (5) calendar days, as shown below, due to delays caused by the Government acting in its sovereign capacity from September 11, 2001 to October 3, 2001. The contract price remains unchanged.

The contract time is revised as follows:

Entire work complete, all phases: May 28, 2003.

SAMPLE

Figure C-5 (Cont'd.)  
NECESSITY FOR THE CHANGE  
FAMILY HOUSING REPLACEMENT

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Minot AFB, ND

**Contract DACA05-01-C-0002**  
**Modification R00015**  
**Government delays**

R&R Joint Venture  
Minot, ND

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This modification is made pursuant to contract clause **"DEFAULT."**

Due to the terrorist acts on September 11, 2001, the Government, acting in its sovereign ability, severely restricted access to Minot Air Force Base and this jobsite from September 11 to September 14. Due to this delay, the contractor is entitled to an extension in the delivery time of 5 calendar days due to the four lost work days.

This modification will also revise the contract milestones and completion dates so that there is only one completion date for the entire contract. The contract had two milestone dates, one for Phase 7 of May 7, 2003 and the other for Phase 6 of May 23, 2003. Due to the sequence agreed upon between the contractor and the user, the last units to be completed will be Phase 7 units at 104 and 106 Winding Way, with all the Phase 6 units being completed in the middle of the contract. This sequence allows the work to progress in a more safe manner within the existing housing community. Under the previous scenario, the contractor would have to utilize streets occupied by the community twice. The attached time-scaled logic diagram from the contractor's approved schedule shows the approved sequence of units and their phases.

The Government is only interested in the final completion date of the entire contract. Intermediate milestone dates have no benefit. It should be noted the specifications only lists liquidated damages for the entire contract, not individual phases, so there will be no change to the liquidated damages in the contract.

Figure C-6

**PROPOSAL ANALYSIS**  
FAMILY HOUSING REPLACEMENT  
Minot AFB, ND

**Contract DACA05-01-C-0002**  
**Modification R00015**  
**Government delays**

R&R Joint Venture  
Minot, ND

The contractor was delayed four workdays (either whole or half days) from Tuesday, September 11, 2001, through Friday, September 14, 2001, and is entitled to a five calendar day time extension. Since this delay was due to the Government acting in its sovereign capacity, the relief available to the contractor is a time extension through the Defaults clause of his contract. There is no monetary relief.

The five day time extension delay was discussed and agreed upon in a series of telephone conversations between the Government's project engineer, Randy Braley, the contractor's project manager, Stu Sautner, the contractor's owner/partner Ron LaCount and the undersigned.

Included in these negotiations was the revision of the contract milestones and completion dates so that there is only one completion date for the entire contract. The contract had two milestone dates, one for Phase 7 of May 7, 2003 and the other for Phase 6 of May 23, 2003. Due to the sequence agreed upon between the contractor and the user, the last units to be completed will be Phase 7 units at 104 and 106 Winding Way, with all the Phase 6 units being completed in the middle of the contract. this sequence allows the work to progress in a more safe manner within the existing housing community. Under the previous scenario, the contractor would have to utilize streets occupied by the community twice. The attached time-scaled logic diagram from the contractor's approved schedule shows the approved sequence of units and their phases.

Date: October 3, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-6 (Cont'd.)

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1 Sep 2003

**PRENEGOTIATION OBJECTIVES MEMORANDUM**

FAMILY HOUSING REPLACEMENT

Minot AFB, ND

**Contract DACA05-01-C-0002**

**Modification R00015**

**Government delays**

R&R Joint Venture

Minot, ND

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The following negotiation objectives follow the same order as they were presented in the Proposal Analysis.

Increase the contract completion date by five calendar days and establish just one contract completion date.

SAMPLE

Date: October 3, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-6 (Cont'd.)



**PRICE NEGOTIATIONS MEMORANDUM**  
FAMILY HOUSING REPLACEMENT  
Minot AFB, ND

**Contract DACA05-01-C-0002**  
**Modification R00015**  
**Government delays**

R&R Joint Venture  
Minot, ND

The five day time extension delay was discussed and agreed upon in a series of telephone conversations between the Government's project engineer, Randy Braley, the contractor's project manager, Stu Sautner, the contractor's owner/partner Ron LaCount and the undersigned.

Included in these negotiations was the revision of the contract milestones and completion dates so that there is only one completion date for the entire contract. The contract had two milestone dates, one for Phase 7 of May 7, 2003 and the other for Phase 6 of May 23, 2003. Due to the sequence agreed upon between the contractor and the user, the last units to be completed will be Phase 7 units at 104 and 106 Winding Way, with all the Phase 6 units being completed in the middle of the contract. this sequence allows the work to progress in a more safe manner within the existing housing community. Under the previous scenario, the contractor would have to utilize streets occupied by the community twice. The attached time-scaled logic diagram from the contractor's approved schedule shows the approved sequence of units and their phases.

**MEMORANDUM OF UNDERSTANDING**

At the conclusion of negotiations on October 3, 2001, a memorandum of understanding was prepared and signed by the Government's negotiator, Bret Budd. This memorandum was faxed to the contractor. The contractor's partner, Ronald R. LaCount, signed the MOU and faxed it back to Black Hills Area Office on the same date.

**THE NEGOTIATED SETTLEMENT**

As the price of this modification is less than \$100,000, preparation of a Government estimate is waived pursuant to EFAR 36.203. Taking into consideration the scope and scheduling of the work, current pricing on labor and materials and other pertinent factors, the final settled price of \$0.00 increase and five additional days of contract time, is considered fair and reasonable.

Date: October 4, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-6 (Cont'd.)

7. Value Engineering. This clause states that the contractor is encouraged to develop, prepare and submit value engineering change proposals (VECPs) voluntarily and share in any instant contract savings under this program.

a. Definitions. The following are the definitions found in FAR 52.248-3:

(1) Contractor's costs are the direct implementation costs the contractor and subcontractors will incur to make the contractual changes required by the Government acceptance of the VECP.

(2) Government costs are the direct implementation and development costs the Government expects to expend in the processing of the VECP. This does not include normal administrative costs but does include Engineering Division's technical review costs.

(3) Instant Contract Savings (ICS) is the gross savings minus allowable contractor's costs.

(4) Value engineering change proposal (VECP) is a proposal that results in reducing the contract price without impairing essential functions and does not change the deliverable end item quantities only. This means that the proposal must perform the same functions as the contract at a lower cost and cannot delete quantities. If the contract requires 6 units and the proposal states the same function can be performed using 4 units, this does not qualify as a VECP because it changes the quantities.

b. Formulas. The formula for calculating the reduction in contract price is:

(1)  $ICS = \text{Gross savings} (-) \text{contractor's costs}$

$\text{Government's share} = [ICS (-) \text{Government's costs}] \times 45\%$

$\text{Contractor's share} = [ICS (-) \text{Government's costs}] \times 55\%$

(2) The payment to the contractor shall be by a modification reducing the contract price by the amount of ICS and adding the calculated contractor's share.

c. Disputes. As stated in FAR 52.248-3(e)(3), if the Government rejects all or part of any VECP, the contractor cannot dispute this action. The decision by the Government to reject, or accept the VECP is final and not subject to the disputes clause.

d. Profit. Profit or fee is not a consideration in the VECP change. Per FAR 48.102(f), profit or fee shall be excluded when calculating instant contract savings or future contract savings.

e. Worksheet. When calculating VECP associated savings and contractor and government share amounts, it is recommended that the worksheet shown in Figure C-7 be used in association with the contractors marked up proposal reflecting negotiated amounts. The worksheet should be included in the modification package along with other support documents.

8. Procedure - Value Engineering Modifications

a. Contractor (Initiator).

- (1) Prepare VECP.
- (2) Notify the Project Manager
- (3) Send information to Area Engineer.

b. Field Engineer.

- (1) Send information to District (CD-QC) for approval.
- (2) Get Approval and VECP number from District.
- (3) Get Mod number (CMS).
- (4) Review RE Memorandum.
- (5) Get ready to negotiate.

c. Field Engineer & Contractor (Negotiators).

- (1) Negotiate.
- (2) Settle weather time.

d. Field Engineer (Executor).

- (1) Write PNM.
- (2) Put mod package together.

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(3) Prepare Standard Form 30 for ACO signature.\*

e. ACO or CO (Signatories).

(1) Sign Form 30.\*\*

(2) Send modification to contractor for signature.

(3) Copy-furnish ACO signed modification to contract holders on the project delivery team.

f. Contractor (Acknowledger).

(1) Sign Form 30.

(2) Return signed Form 30 to area.

\* There are several options for preparing a GSA Standard Form 30, Amendment of Solicitation / Modification of Contract. The field office may use whatever method is most administratively convenient. However, all SF30 documents must be recorded in construction systems and the Standard Procurement System (SPS).

\*\* The SF30 may be signed electronically in SPS or by wet signature on the original document – both forms are acceptable.

VECP SUMMARY WORKSHEET

CONTRACT NO. DAC\_\_45-\_\_\_\_-\_\_\_\_-\_\_\_\_

\_\_\_\_\_  
(Location)

Modification No. R\_\_\_\_\_

\_\_\_\_\_  
(Description)

1. Credit for:_____		\$_____
2. Add for:_____		\$_____
3. Credit To Prime:	(1 – 2)	\$_____
4. Prime Development Costs:		\$_____
5. Total Direct Credit:	(3 – 4)	\$_____
6. Prime Markups (excluding profit):		\$_____
7. Instant Contract Savings:	(5 + 6)	\$_____
8. Government Costs:		\$_____
9. Total Savings:	(Pay Item 1) (7 – 8)	\$_____
10. Government Share:	(45% x 9)	\$_____
11. Contractor Share:	(Pay Item 2) (55% x 9)	\$_____
12. Modification Amount:	(Net Decrease) (8 + 10)	\$_____

Figure C-7

OM 415-1-4  
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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J		PAGE OF PAGES 1   2	
2. AMENDMENT/MODIFICATION NO. A00007		3. EFFECTIVE DATE 05-Sep-2001		4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)	
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 2100 S SEVENTH S RAPID CITY SD 57701		CODE DACA45		7. ADMINISTERED BY (If other than item 6)  <b>See Item 6</b>		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) R&R JOINT VENTURE RONALD R. LA COUNT PO BOX 2045 MINOT ND 58702				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. DACA05-01-C-0002			
				X 10B. DATED (SEE ITEM 13) 30-Apr-2001			
CODE 1SVW4		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required) <b>See Schedule</b>							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
X A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "VALUE ENGINEERING -- CONSTRUCTION"							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:							
D. OTHER (Specify type of modification and authority)							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>0</u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00012  Family Housing Replacement Minot AFB, North Dakota  The contractor shall furnish all plant, labor, and material, and perform all work necessary to accomplish the following described work:  CONTINUED ON PAGE 2							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) MARK A MAILANDER / ADMINISTRATIVE CONTRACTING OFF			
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA  BY (Signature of Contracting Officer)		16C. DATE SIGNED 05-Sep-2001	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-8

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

The total cost has decreased from \$26,660,177.00 by \$8,094.00 to \$26,652,083.00

As a result of this modification, the total funded amount of the contract is decreased by \$8,094.00 from \$26,660,177.00 to \$26,652,083.00

CLIN :0001

AA: 891 7874 P71100 000000 01 CGX 000000 667100 FSR: 010712 PSR: 466074 DRS:  
041374 000000000000

is decreased by \$8,094.00 from \$16,401,204.00 to \$16,393,110.00

R00012

1. **SCOPE:** VECP01-09. Revise sewer cleanouts.

2. **SPECIFICATION CHANGES:** Specification page 01011-8. Paragraph 1.c.(2), revise the fourth sentence to read "Cleanouts, in yard areas, shall be installed with the top of the cleanout installed with a removable cap six-inches below grade a 8" x 8" x 1/4" steel plate located two inches above the top of the cap."

3. **DRAWING CHANGES:** None.

Due to the changes described herein, the contract price will be adjusted and is designated for payment purposes as follows:

Mod		Unit	Amount	Amount	
<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Price</u>	<u>Decrease</u>	<u>Increase</u>
12M-1	VECP01-09. Revise sewer cleanouts	Job	L.S.	\$17,987.00	
12M-2	Contractor's share	Job	L.S.		\$9,893.00
	NET DECREASE			\$8,094.00	

The contract time remains unchanged.

It is understood and agreed that the adjustment to the contract price and time for performance set forth herein is inclusive of all costs and time incurred by the contractor as a consequence of this modification individually and collectively with other modifications including, but not limited to, those for delay, impact, inefficiency and extended field and home office overhead.

Figure C-8 (Cont'd.)

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**NECESSITY FOR THE CHANGE**  
FAMILY HOUSING REPLACEMENT  
Minot AFB, ND

**Contract DACA05-01-C-0002**  
**Modification R00012**  
**VECP01-09. Revise sewer cleanouts**

R&R Joint Venture  
Minot, ND

---

This modification is made pursuant to contract clause **"VALUE ENGINEERING -- CONSTRUCTION."**

The contractor submitted a value engineering proposal with his serial letter 101-65, dated August 8, 2001, to change the sewer clean-out detail from having an above grade cast-iron lid to being a plastic cap installed six-inches below grade with a metal plate directly above it to allow for location by metal detector.

This change was reviewed by the Omaha District and coordinated with Minot Air Force Base's Civil Engineering Squadron and found to be acceptable.

SAMPLE

Figure C-9



**PROPOSAL ANALYSIS**  
FAMILY HOUSING REPLACEMENT  
Minot AFB, ND  
**Contract DACA05-01-C-0002**  
**Modification R00012**  
**VECP01-09. Revise sewer cleanouts**  
R&R Joint Venture  
Minot, ND

The contractor initially proposed this value engineering proposal to change the sanitary sewer clean-out requirements in his serial letter 101-63, dated August 2, 2001. This proposal did not include any costs.

On August 3, 2001 the Government informed the contractor, via serial letter 01-0002-37, that his proposal was found to be technically acceptable. The contractor was requested to furnish a cost proposal.

A proposal was submitted by the contractor's serial letter 101-65 on August 8, 2001. The contractor's proposed credit to the Government was \$6,571.80.

The contractor's proposal was reviewed in detail by the undersigned. This review consisted of checking each proposed work item to verify that it was a requirement of the modification scope. Also, the proposal was checked for reasonableness, omissions and/or duplications, math errors, takeoff quantity errors, unit prices and markups. Adequate cost and pricing data was provided. This review resulted in the following prenegotiations objectives:

1. This work will be performed by the contractor's utility subcontractor, Earthmovers. The quote for the materials are addressed to this subcontractor, therefore, there needs to be a credit from Earthmovers for overhead.
2. The quotes also indicate that sales tax was not included. The North Dakota sales tax of 5% needs to be added to the material costs.
3. The contractor used an overhead rate of 15.34%. The agreed upon overhead rate, based on his accounting data, is 15.66%.

**TIME**

This change does not impact the duration of any on-site activities; therefore, no change in contract time was requested nor is justified. A subnet will be prepared by the contractor for approval prior to the next NAS update.

Date: August 28, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
--------------------------	--	------------

Figure C-9 (Cont'd.)

OM 415-1-4  
APP C  
1 SEP 2003

**PRENEGOTIATION OBJECTIVES MEMORANDUM**

FAMILY HOUSING REPLACEMENT  
Minot AFB, ND

**Contract DACA05-01-C-0002**  
**Modification R00012**  
**VECP01-09. Revise sewer cleanouts**

R&R Joint Venture  
Minot, ND

---

The following negotiation objectives follow the same order as they were presented in the Proposal Analysis.

1. Add a credit from Earthmovers for overhead. In past modifications we have used 16.97%.
2. The North Dakota sales tax of 5% needs to be added to the material costs.
3. The contractor must revise his proposed overhead rate from 15.34% to 15.66%.

**TIME**

No change in contract time is justified.

Date: August 28, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
--------------------------	--	------------

Figure C-9 (Cont'd.)

**PRICE NEGOTIATIONS MEMORANDUM**  
FAMILY HOUSING REPLACEMENT  
Minot AFB, ND  
**Contract DACA05-01-C-0002**  
**Modification R00012**  
**VECP 01-09. Revise sewer cleanouts**  
R&R Joint Venture  
Minot, ND

All negotiations were held via telephone and concluded on August 28, 2001. The parties in the negotiations were:

<u>Organization/Location</u>	<u>Name</u>	<u>Title</u>	<u>Phone No.</u>
R&R Joint Venture Minot, ND	Stu Sautner	Project Manager	(701)839-6525
Corps of Engineers Rapid City, SD	Bret Budd	Civil Engineer	(605)341-3169

During negotiations, the contractor revised his proposed credit to the Government from \$6,571.80 increase to \$8,094.00. This revision was due to the following:

1. A credit from Earthmovers for overhead at 16.97% was added to the direct costs.
2. The North Dakota sales tax of 5% was added to the material costs.
3. The contractor revised his proposed overhead rate from 15.34% to 15.66%.

**TIME**

No additional contract time was requested nor is justified. This change does not affect any of the durations of the activities on-site. A subnetwork will be prepared by Mr. Sautner for approval prior to the next NAS update.

**MEMORANDUM OF UNDERSTANDING**

At the conclusion of negotiations on August 28, 2001, a memorandum of understanding was prepared and signed by the Government's negotiator, Bret Budd. This memorandum was faxed to the contractor. The contractor's partner, Ronald R. LaCount, signed the MOU and faxed it back to Black Hills Area Office on August 29, 2001.

**THE NEGOTIATED SETTLEMENT.**

As the price of this modification is less than \$100,000, preparation of a Government estimate is waived pursuant to EFAR 36.203. Taking into consideration the scope and scheduling of the work, current pricing on labor and materials and other pertinent factors, the final settled price of \$8,094.00 increase and no change in contract time, is considered fair and reasonable.

Date: September 5, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
----------------------------	--	------------

9. Variation in Estimated Quantities. FAR 52.212-11 states, "If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified."

10. Procedure - Variation in Estimated Quantities.

a. The RE or PE must keep an accurate accounting of each of the unit priced items as they are being expended and report to the area when it is apparent there is going to be an overrun. This report must be accompanied with an estimate of what the final quantity of that item is expected to be.

b. The Area Office will take action to set up funds to cover the estimated cost of the overruns or underruns. This is accomplished with a contract modification and corresponding recorded obligation.

c. Upon invoking the VEQ clause, either party can demand a renegotiation of a unit price. All revised unit prices must be adequately justified in the price negotiation memorandum. An explanation must also be provided for no change in the unit price.

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AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE J	PAGE OF PAGES 1   2
2. AMENDMENT/MODIFICATION NO. A00002		3. EFFECTIVE DATE 06-May-2003		4. REQUISITION/PURCHASE REQ. NO. W59XQG-2098-7545	
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 631 SAINT ANNE S RAPID CITY SD 57701		CODE DACA45		5. PROJECT NO.(If applicable) DACW45	
7. ADMINISTERED BY (If other than item 6) U.S. ARMY CORPS OF ENGINEERS, OMAHA DIST CONTRACTING DIVISION 106 S 15TH STREET FEDERAL BLDG. OMAHA NE 68102-1618		CODE DACA45			
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) LONG PAINTING COMPANY MIKE CASSITY 21414 - 68TH AVE SOUTH KENT WA 98032				9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
				X 10A. MOD. OF CONTRACT/ORDER NO. DACW45-02-C-0011	
				X 10B. DATED (SEE ITEM 13) 10-Jul-2002	
CODE 4Z065		FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
X A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "VARIATION IN ESTIMATED QUANTITIES"					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>0</u> copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00009  Spot Paint Penstocks Garrison Dam & Power Plant Riverdale, North Dakota  The current contract value is INCREASED \$59,409.30 to \$ 1,392,539.30.  The current contract obligation remains UNCHANGED at \$815,000.00.  The contractor shall furnish all plant, labor, and material, and perform all work necessary to accomplish the following described work:  CONTINUED ON PAGE 2 Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) LAWRENCE C JACKSON / ADMINISTRATIVE CONTRACTING OFF TEL: (605)341-3169 EMAIL: lawrence.c.jackson@usace.army.mil		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY <i>Lawrence C. Jackson</i> (Signature of Contracting Officer)	
				16C. DATE SIGNED 06-May-2003	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-10

C-37

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1 SEP 2003

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**The following items are applicable to this modification:**  
DESCRIPTION OF CHANGE

R00009

The final quantity for Pay Item 2, "All work, complete, for debris removal for Penstocks 1 thru 3", is 350 cubic feet. Since this exceeded the estimated quantity of 150 cubic feet by more than 15%, an adjustment to the bid unit price of \$500.00 per cubic feet is made pursuant to contract clause "VARIATION IN ESTIMATED QUANTITIES." Based on this adjustment, the overrun quantity of 200 cubic feet will be reimbursed as shown below.

Due to the changes described herein, the contract price will be adjusted and is designated for payment purposes as follows:

Mod Item No.	Description	Quantity	Unit	Unit Price	Amount Increase
9M-1	Overrun in Pay Item 2 (Less than 115%)	22.50	C.F.	\$500.00	\$11,250.00
9M-2	Overrun in Pay Item 2 (Over 115%)	177.50	C.F.	\$271.32	\$48,159.30
	<b>TOTAL INCREASE</b>				<b>\$59,409.30</b>

The contract time remains unchanged.

It is understood and agreed that the adjustment to the contract price and time for performance set forth herein is inclusive of all costs and time incurred by the contractor as a consequence of this modification individually and collectively with other modifications including, but not limited to, those for delay, impact, inefficiency and extended field and home office overhead.

Figure C-10 (Cont'd.)

**NECESSITY FOR THE CHANGE**

Spot Paint Penstocks  
Garrison Dam, ND

**Contract DACW45-02-C-0011  
Modification R00009  
Overrun in Pay Item 2**

Long Painting Co.  
Kent, WA

---

This modification is required due to “**Variations in Estimated Quantities**”, RMS reason code “Q”, and is made pursuant to contract clause “VARIATION IN ESTIMATED QUANTITIES.” By definition, this is considered to be a uncontrollable modification for reporting purposes.

The final quantity for Pay Item 2, “All work, complete, for debris removal for Penstocks 1 thru 3”, is 350 cubic feet. Since this exceeded the estimated quantity of 150 cubic feet by more than 15%, an adjustment to the bid unit price of \$500.00 per cubic feet is made pursuant to contract clause “VARIATION IN ESTIMATED QUANTITIES.”

SAMPLE

OM 415-1-4  
APP C  
1 SEP 2003

**PROPOSAL ANALYSIS**  
Spot Paint Penstocks  
Garrison Dam, ND  
**Contract DACW45-02-C-0011**  
**Modification R00009**  
**Overrun in Pay Item 2**  
Long Painting Co.  
Kent, WA

The contractor submitted a request for a revision to Pay Item 2, via his serial letter 3020042-009 on April 11, 2003. The amount of the contractor's proposal was \$103,441.75 increase, with no additional contract time.

The contractor's proposal was reviewed in detail by the undersigned as well as by the Project Engineer, Dale Evenson. This review consisted of checking each proposed work item to verify that it was a requirement of the modification scope. Also, the proposal was checked for reasonableness, omissions and/or duplications, math errors, takeoff quantity errors, unit prices and markups. Adequate cost and pricing data was provided. This review resulted in the following prenegotiations objectives:

1. There is a large math error in the calculation of overhead. See the enclosed spreadsheet prepared by the undersigned which corrects the math error.
2. Profit for Horsley Specialties should be 8.2% based on the weighted guidelines method, not their proposed 10%
3. Horsley needs to provide a breakdown of their materials.
4. Horsley must revise their overhead rate to eliminate unallowable overhead costs from their overhead pool.
5. Long Painting's proposed profit of 10% is too high. A profit of 5.95% would be justified by the weighted guidelines method.
6. Long Painting needs to add bond. Based on the SF-25, their bonding rate for this modification is 0.72%.

**TIME**

The contract did not request any additional contract time. By observation, this additional work did not delay the completion of the project which is controlled by the completion of major rehabilitation contract.

Date: April 17, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-11 (Cont'd.)



**PRENEGOTIATION OBJECTIVES MEMORANDUM**

Spot Paint Penstocks  
Garrison Dam, ND

**Contract DACW45-02-C-0011  
Modification R00009  
Overrun in Pay Item 2**

Long Painting Co.  
Kent, WA

---

The following negotiation objectives follow the same order as they were presented in the Proposal Analysis.

1. Correct the math error in the calculation of Horsley Specialties' overhead.
2. Profit for Horsley Specialties should be 8.2% based on the weighted guidelines method, not their proposed 10%
3. Horsley needs to provide a breakdown of their materials.
4. Horsley must revise their overhead rate to eliminate unallowable overhead costs from their overhead pool.
5. Long Painting's proposed profit of 10% is too high. A profit of 5.95% would be justified by the weighted guidelines method.
6. Long Painting needs to add bond. Based on the SF-25, their bonding rate for this modification is 0.72%.

**TIME**

No change in contract time was requested or is justified.

Date: April 17, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
-------------------------	--	------------

Figure C-11(Cont'd.)

OM 415-1-4  
APP C  
1 SEP 2003

**PRICE NEGOTIATIONS MEMORANDUM**

Spot Paint Penstocks  
Garrison Dam, ND

**Contract DACW45-02-C-0011  
Modification R00009  
Overrun in Pay Item 2**

Long Painting Co.  
Kent, WA

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All negotiations were held via telephone and concluded on May 2, 2003. The parties in the negotiations were:

<u>Organization/Location</u>	<u>Name</u>	<u>Title</u>	<u>Phone No.</u>
Long Painting Co. Kent, WA	Don Sybil	Project Manager	(253)234-8050
Corps of Engineers Rapid City, SD	Bret Budd	Civil Engineer	(605)341-3169

During negotiations, the contractor revised his proposal from \$103,441.75 increase to \$59,409.30. This revision was due to the following.

1. The math error in the calculation of Horsley Specialties' overhead was corrected.
2. Profit for Horsley Specialties was agreed upon at 8.2% based on the weighted guidelines method, not their proposed 10%
3. Horsley provided a breakdown of their materials.
4. Horsley revised their overhead rate from 57.50 % to 57.10% due to elimination of unallowable overhead costs from their overhead pool.
5. Long Painting's profit was reduced to 5.95% based on the weighted guidelines method.
6. Long Painting added bond of 0.72%.

**TIME**

The contract did not request any additional contract time. By observation, this additional work did not delay the completion of the project that is controlled by the completion of major rehabilitation contract.

Figure C-11 (Cont'd.)

**MEMORANDUM OF UNDERSTANDING**

At the conclusion of negotiations on May 2, 2003, a memorandum of understanding was prepared and signed by the Government's negotiator, Bret Budd. This memorandum was faxed to the contractor. The contractor's project manager, Don Sybil, signed the MOU and sent it back to Black Hills Area Office, via courier, and was received by the undersigned on May 6, 2003.

**THE NEGOTIATED SETTLEMENT.**

As the price of this modification is less than \$100,000, preparation of a Government estimate is waived pursuant to EFAR 36.203. Taking into consideration the scope and scheduling of the work, current pricing on labor and materials and other pertinent factors, the final settled price of \$59,409.30 increase and no change in contract time, is considered fair and reasonable.

SAMPLE

Date: May 6, 2003	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-11 (Cont'd.)

OM 415-1-4  
APP C  
1 Sep 2003

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE J	PAGE OF PAGES 1   3
2. AMENDMENT/MODIFICATION NO. A00009	3. EFFECTIVE DATE 18-Nov-2002	4. REQUISITION/PURCHASE REQ. NO. W59XQG-1135-0960		5. PROJECT NO.(If applicable)
6. ISSUED BY BLACK HILLS AREA OFFICE USAED, OMAHA CENWO-CD-BH 631 SAINT ANNE S RAPID CITY SD 57701	CODE DACA45	7. ADMINISTERED BY (If other than item 6) U.S. ARMY CORPS OF ENGINEERS, OMAHA CONTRACTING DIVISION 106 S 15TH STREET FEDERAL BLDG. OMAHA NE 68102-1618		CODE DACW45
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) RUNGE ENTERPRISES INC ROBERT ROTH 3500 HOVLAND DRIVE SIOUX FALLS SD 57107			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			X	10A. MOD. OF CONTRACT/ORDER NO. DACW45-02-C-0001
			X	10B. DATED (SEE ITEM 13) 07-Nov-2001
CODE 1SAW6			FACILITY CODE	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required) <b>See Schedule</b>				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
X A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "VARIATIONS IN ESTIMATED QUANTITIES"				
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).				
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:				
D. OTHER (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return 0 copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) R00009  Flood Control Project Phase 1B, Big Sioux River, Sioux Falls, South Dakota  The contractor shall furnish all plant, labor, and material, and perform all work necessary to accomplish the following described work:  CONTINUED ON PAGE 2				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) MARK A MAILANDER / ADMINISTRATIVE CONTRACTING OFF TEL: (605)341-3169 EMAIL: mark.a.mailander@usace.army.mil		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <i>Mark A Mailander</i> (Signature of Contracting Officer)		16C. DATE SIGNED 18-Nov-2002

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-12

C-44

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

SECTION 00010 - SOLICITATION CONTRACT FORM

The total cost of this contract was decreased by \$91,709.78 from \$1,535,000.65 to \$1,443,290.87.

CLIN 0001:

AA: 96X31220000 082417                      32001J5162012695                      NA    96252 was decreased by \$91,709.78.

(End of Summary of Changes)

**The following items are applicable to this modification:**

SCOPE OF WORK

R00009

1. **SCOPE:** Finalize Estimated Quantities.

2. **CONTRACT DACW45-02-C-0001, BIDDING SCHEDULE, PAGE 00010-3;** Based on the Finalized Estimated Quantities shown on attached page 3 of 3, the TOTAL AMOUNT is decreased by \$91,709.78, from \$1,535,000.65 to \$1,443,290.87.

3. **SPECIFICATION CHANGES:** None.

4. **DRAWING CHANGES:** None.

5. **Page 3 of 3** shows the Finalized Estimated Quantities and amounts for Contract DACW45-02-C-0001. Payment is included under the corresponding bid item at the indicated contract unit price.

The contract time remains unchanged.

It is understood and agreed that the adjustment to the contract price and time for performance set forth herein is inclusive of all costs and time incurred by the contractor as a consequence of this modification individually and collectively with other modifications including, but not limited to, those for delay, impact, inefficiency and extended field and home office overhead.

OM 415-1-4  
APP C  
1 Sep 2003

**NECESSITY FOR THE CHANGE**

PHASE 1B FLOOD CONTROL,  
SIOUX FALLS, SD

**Contract DACW45-02-C-0001  
Modification R00009  
Finalize Estimated Quantities**

Runge Enterprises, Inc.  
Sioux Falls, South Dakota

---

This modification is required due to a **VARIATIONS IN ESTIMATED QUANTITIES, RMS reason code "Q"** and is made pursuant to contract clause **"VARIATION IN ESTIMATED QUANTITIES."**

The contract submitted a pay request showing final quantities. These quantities were confirmed by COE Construction Representative Alan Prismantis. This modification shows the estimated and final quantities, and adjusts the funds committed to the contract so that final payment can be made.

SAMPLE

Figure C-13

OM 415-1-4  
APP C  
1 Sep 2003

**PROPOSAL ANALYSIS**  
PHASE 1B FLOOD CONTROL,  
SIOUX FALLS, SD

**Contract DACW45-02-C-0001**  
**Modification R00009**  
**Finalize Estimated Quantities**

Runge Enterprises, Inc.  
Sioux Falls, South Dakota

---

The contractor submitted his final quantities to Government representative Alan Prismantis as reflected by Application For Payment No. 8. These quantities were reviewed and found to be accurate.

**TIME**

This contract has been accepted as substantially complete. No additional contract time is required.

SAMPLE

Date: 14 NOV 2002	Prepared By: <b>STEVEN L. SCHJODT, PE</b> Civil Engineer/Negotiator	SIGNATURE:
----------------------	---	------------

Figure C-13 (Cont'd.)

OM 415-1-4  
APP C  
1 Sep 2003

**PRENEGOTIATION OBJECTIVES MEMORANDUM**

PHASE 1B FLOOD CONTROL,  
SIOUX FALLS, SD

**Contract DACW45-02-C-0001**  
**Modification R00009**  
**Finalize Estimated Quantities**

Runge Enterprises, Inc.  
Sioux Falls, South Dakota

---

The estimated quantities submitted by the contractor were verified by Government representative Alan Prismantis and were determined to be accurate and reasonable. The modification does not affect the contract completion date. Based on the finalized estimated quantities, the negotiation objective is to reduce the total contract amount \$91,109.78 from \$1,535,000.65 to \$1,443,290.87 with no change in contract time.

SAMPLE

Date: 14 Nov 2002	Prepared By: <b>STEVEN L. SCHJODT, PE</b> Civil Engineer/Negotiator	SIGNATURE:
----------------------	---	------------

Figure C-13 (Cont'd.)



**PRICE NEGOTIATIONS MEMORANDUM**

PHASE 1B FLOOD CONTROL,  
SIOUX FALLS, SD

**Contract DACW45-02-C-0001**  
**Modification R00009**  
**Finalize Estimated Quantities**

Runge Enterprises, Inc.  
Sioux Falls, South Dakota

---

Based on the final quantities submitted by the contractor and confirmed by Alan Prismantis, a Memorandum Of Understanding in the amount of \$91,709.78 decrease in contract amount and no change in contract time, was signed by Contractor's representative, Robert Roth, and Government representative, Steve Schjodt on November 15, 2002.

**TIME**

This contract has been accepted as substantially complete. No additional contract time was requested nor is justified.

**THE NEGOTIATED SETTLEMENT.**

As the price of this modification is less than \$100,000, preparation of a Government estimate is waived pursuant to EFAR 36.203. Taking into consideration the scope and scheduling of the work, current pricing on labor and materials and other pertinent factors, the final settled price of \$91,709.78 DECREASE and no change in contract time, is considered fair and reasonable.

Date: 15-Nov-02	Prepared By: <b>STEVEN L. SCHJODT</b> Civil Engineer/Negotiator	SIGNATURE:
--------------------	---	------------

Figure C-13 (Cont'd.)

11. Termination for the Convenience of the Government. FAR Part 49 - Termination of Contracts covers all the aspects of this policy and procedure. The responsibilities of the construction field offices are essentially the same as for any modification over the ACO's contractual authority. Only the CO can terminate the contract, the ACO does not have that authority.

12. Procedure - Termination for Convenience. If the decision is made to terminate the contract for the convenience of the Government, use the following procedure for this type of action as allowed by the contract termination clause (FAR 52.249-2).

a. A certified termination letter is sent by the CO to the contractor with copies to the surety, Construction Division, and the Area Engineer. The format and language are contained in FAR 49.601-2 and are tailored to direct any work that is required to be completed prior to termination. Enclosures are Forms SF 1411, SF 1436 and SF 1439. The letter also serves as a stop work order and a request for proposal for termination costs.

b. A pre-proposal conference is held and the rules for termination settlement are discussed and instructions are given on filling out the forms forwarded with the termination letter.

c. When the contractor's and required subcontractor's proposals are received by the Area Engineer, the area office engineer prepares a technical analysis, which, along with a draft letter to the cognizant DCAA audit offices, is sent through CENWO-CD-CA to the Contracting Officer for signature. An audit is required for any termination proposal over \$100,000, including those from subcontractors. FAR 49.107 provides details on termination audits.

d. If the remaining obligated contract funds are in excess of the contractor's proposal, a credit modification may be executed by the CO to deobligate those excess funds before final settlement is made. This will allow the customer to use these funds for other purposes.

e. The Government estimate is prepared using the audit report as a guide in determining the allowability of the contractor's proposed costs (FAR 49.107(d)). Based on the differences between the Government estimate and the contractor's proposal, a negotiation objectives memorandum is prepared.

f. The negotiations are normally conducted by the Area office. The termination settlement should compensate the contractor for all costs for work completed on the terminated contract and preparatory work performed prior to the termination. This includes costs for work on submittals, shop drawings, etc. FAR 49.201 states:

(1) Settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principals, is the heart of a settlement. In addition to compensation for work performed and profit, the contractor is allowed compensation for termination costs such as legal fees and administrative expense incurred in preparing the termination cost proposal. The final settlement, excluding termination costs, cannot exceed the total contract amount as modified.

(2) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(3) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

g. As stated in FAR 49.202, the contractor is allowed profit on preparations made and contract work performed up to the time of termination. The contractor is not allowed the amount of profit that was anticipated to be made. If the contractor would have sustained a loss if it would have been allowed to complete the work, no profit is allowed and the settlement should be adjusted to reflect the loss (FAR 49.203). Generally, the contractor should be paid settlement expenses plus the remainder of settlement expenses reduced by multiplying the remainder by the ratio of the total contract price to the remainder plus the estimated cost to complete the entire contract.

h. At the conclusion of the negotiations, when a settlement is reached, a price negotiation memorandum (PNM), certifications, and SF 30 are prepared and the termination settlement package is sent through CENWO-CD-CA for presentation to the Contract Review Board and then to the Contracting Officer for signature. Once the Contracting Officer signs the settlement modification, a final pay estimate is prepared by CENWO-CD-CA. A copy of the PNM is forwarded to the audit agency.

OM 415-1-4

APP C

1 Sep 2003

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE <b>J</b>	PAGE OF PAGES <b>1</b>   <b>5</b>
2. AMENDMENT/MODIFICATION NO. <b>P00005</b>		3. EFFECTIVE DATE <b>08-Mar-2001</b>		4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY U.S. ARMY CORPS OF ENGINEERS, OMAHA DIST CONTRACTING DIVISION 215 NORTH 17TH STREET OMAHA NE 68102-4978		CODE <b>DACA45</b>		7. ADMINISTERED BY (If other than item 6) BLACK HILLS AREA OFFICE USACE 2100 S. SEVENTH SUITE L-17 RAPID CITY SD 57701	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) AMERICAN RENOVATION & CONSTRUCTION CO. TONY DETHLOFF 3645 CAMINO DEL RIO SOUTH SAN DIEGO CA 92108-4004		9A. AMENDMENT OF SOLICITATION NO.		9B. DATED (SEE ITEM 11)	
CODE <b>0R7R5</b>		FACILITY CODE		X 10A. MOD. OF CONTRACT/ORDER NO. <b>DACA05-00-C-0003</b>	
				X 10B. DATED (SEE ITEM 13) <b>07-Nov-2000</b>	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required) <b>See Schedule</b>					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
X A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. Contract Clause "TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT"					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <b>0</b> copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION: (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) <b>R00006</b>  Replacement of Military Family Housing Minot AFB, North Dakota  CONTINUED ON PAGE 2					
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) JAMES B OPITZ / CONTRACTING OFFICER		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY (Signature of Contracting Officer)	
				16C. DATE SIGNED <b>20-Mar-2001</b>	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

Figure C-14

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

Changes in Solicitation/Contract/Order Form

The total cost has decreased from \$750,000.00 by \$250,000.00 to \$500,000.00

Changes in Section 00010

CLIN 0001

The total CLIN cost has decreased from \$750,000.00 by \$250,000.00 to \$500,000.00

The unit price amount has decreased from \$750,000.00 by \$250,000.00 to \$500,000.00

SAMPLE

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Changes in Section 00800

Summary for the Payment Office

As a result of this modification, the total funded amount of the contract is decreased by \$250,000.00 from \$750,000.00 to \$500,000.00

CLIN :0001  
AA: 21 NA 2000 2050.0000 G6 2000 08 8061 70-0 25066 3200 004J33  
is decreased by \$250,000.00 from \$750,000.00 to \$500,000.00

R00006

#### TERMINATION SETTLEMENT AGREEMENT

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated August 17, 2000.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the contractor a certificate stating --

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement,

Figure C-14 (Cont'd.)

- (i) are properly allocable to the terminated portion of the contract,
  - (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and
  - (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.
- (4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.
- (5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.
- (6)
- (i) The Contractor has received \$499,000.00 for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.
  - (ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$1,000.00, arrived at by deducting from the sum of \$500,000.00 the amount of \$499,000.00 for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),
  - (iii) The net settlement of \$1,000.00 in subdivision (ii) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) of this section.
- (7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:
- (i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

Figure C-14 (Cont'd.)

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)



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**NECESSITY FOR THE CHANGE**  
FAMILY HOUSING REPLACEMENT, PHASES 6 & 7  
MINOT AFB, NORTH DAKOTA

**Contract DACA05-00-C-0003**  
**Modification R00006**  
**Final Termination Settlement**

American Renovation & Construction Company  
San Diego, CA

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This modification is made pursuant to contract "**TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT.**"

This contract was fully terminated for the convenience of the Government on August 17, 2000. This modification makes the final settlement for the termination.

SAMPLE

**PROPOSAL ANALYSIS**  
FAMILY HOUSING REPLACEMENT, PHASES 6 & 7  
MINOT AFB, NORTH DAKOTA  
**Contract DACA05-00-C-0003**  
**Modification R00006**  
**Final Termination Settlement**  
American Renovation & Construction Company  
San Diego, CA

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The request for proposal for Family Housing Replacement, Phases 6 and 7, was issued on August 20, 1999 as DACA05-99-R-0062. The proposals were due in the Sacramento District by October 18, 1999.

Five amendments were issued during the proposal process with American Renovation and Construction submitting its design and technical proposal on November 22, 1999. This submittal package consisted of a design narrative, an outline of the specifications to be used for construction, catalog cuts on the items proposed to be incorporated into the projects, color boards as well as partial drawings showing the architectural features of the proposed housing units along with their landscaping, HVAC and electrical systems and other major features.

American Renovation and Construction submitted its final price proposal on January 14, 2000. This proposal was accepted and contract DACA05-00-C-0003 was awarded to American Renovation and Construction ("ARC" or "contractor") on March 15, 2000 by the Sacramento District. Only the base bid item for Phase 6 was awarded in the amount of \$9,540,000.00. The bid for the Phase 7 basic work item was \$12,046,000.00. Were the Government to award all the options, the total value of the contract would grow to \$32,509,196.00.

As indicated in amendment 0004, the Congress limited funding for this contract to \$9,664,000 for Phase 6 (FY2000) and \$18,112,000 for Phase 7 (FY2001), for a total maximum contract amount of \$27,776,000.

There was only one other proposer for this contract, Atherton Construction from Las Vegas, Nevada. Atherton was just completing the Phases 4 and 5 housing project at Minot Air Force Base. Atherton's proposal exceeded the Congressional limitation and was not considered further for award due to the limit.

Shortly after award, on March 31, 2000, Atherton Construction, protested the award of the contract to ARC. This protest was submitted to the Contracting Officer. Atherton had viewed ARC's proposal drawings in the Corps of Engineer's project office at Minot Air Force Base and had noted several items that they felt did not comply with the requirements of the Request for Proposal. These discrepancies between the drawings and the RFP formed the basis for their protest. They contended that had ARC complied with the RFP that their price would have been higher and that Atherton would have had a better chance at award of the project.

Atherton's protest was thoroughly reviewed and found to have some merit. In order to rectify the situation, discussions were reopened between the Government, ARC and Atherton and amendment 0006 was issued to both firms on May 15, 2000.

American submitted a revised proposal for amendment 0006 on June 16, 2000. In this proposal they raised their proposed price for the Phase 6 base item from \$9,540,000 to \$9,663,990.00. This is only \$10 below the Congressional limit for funding on this phase of the contract. Their bid for Phase 7 basic work item went from \$12,046,000.00 to \$12,348,100.00. Were the Government to award all the options, the total value of the contract would grow to \$32,509,196.00.

<u>Bid Item</u>	<u>Description</u>	<u>Contract</u>	<u>Amend 0006</u>	<u>Increase</u>	<u>Congress</u>
0001A	Phase 6 Base Price	\$ 9,540,000.00	\$ 9,663,990.00	\$ 123,990.00	
0002A	Phase 6 - 6 Units	\$ 938,040.00	\$ 957,090.00	\$ 19,050.00	
0003A	Phase 6 - 6 Units	\$ 949,340.00	\$ 968,390.00	\$ 19,050.00	
	Phase 6 Total	\$11,427,380.00	\$11,589,470.00	\$ 162,090.00	\$ 9,664,000.00
0004A	Phase 7 - 76 Units	\$12,046,000.00	\$12,348,100.00	\$ 302,100.00	
0005A	Phase 7 - 6 Units	\$ 919,702.00	\$ 938,752.00	\$ 19,050.00	
0006A	Phase 7 - 6 Units	\$ 926,014.00	\$ 945,064.00	\$ 19,050.00	
0007A	Phase 7 - 46 Units	\$ 7,190,100.00	\$ 7,374,100.00	\$ 184,000.00	
	Phase 7 Total	\$21,081,816.00	\$21,606,016.00	\$ 524,200.00	\$18,112,000.00
	Contract Total	\$32,509,196.00	\$33,195,486.00	\$ 686,290.00	\$27,776,000.00

The revised proposals were reviewed by the same boards that reviewed the original proposals. During this review, it was deemed that Atherton had inappropriately received the information on which they based their protest and were disqualified. ARC was notified by the Sacramento District, via letter, on July 20, 2000 that Atherton was disqualified from further consideration and that ARC would retain award of the contract.

Atherton subsequently protested this decision on July 28, 2000 to the General Counsel, General Accounting Office.

The contract was termination for the convenience of the Government on August 17, 2000. The reason for the termination, as stated in the termination letter:

"1. Because of the protest initially lodged by Atherton Construction, Inc., a serious delay in issuance of NTP has occurred. The long delays in proceeding with construction since award to your firm in March have caused the Government to have very serious doubts that the currently awarded work could now be accomplished within or very near the current contract amount. The availability of significant additional funds is extremely unlikely. Our internal business analysis had lead us to the conclusion that your present contract for the subject work should be terminated.

2. It is the intent of the Government to proceed to quickly reprocure a portion of the originally advertised work, which was not contained in the base item of the subiect solicitation. Depending on

future funds availability, all previously advertised work may be reprocured.

3. As a result, the Government has made the determination to proceed with the following course of action:..."

Since the contract was terminated, the GAO dismissed Atherton's protest without further action. Their determination was that since there was no longer a contract, the protest was moot.

Initial telephone and e-mail conversations were held between the contractor, his designer (Edward J. Cass and Associates), the Black Hills Area Engineer, Mark Mailander, and myself. Both the contractor and his designer decided to be represented by counsel and all further conversation was only with the counsel for ARC, Mr. William L. Bruckner of the firm Bruckner and Walker.

The contractor submitted his original proposal on December 6, 2000. The amount of his proposal was \$773,980.86. The contractor also submitted his proposal on the required Standard Forms on December 7, 2000 in the same amount.

The contractor's proposal was reviewed in detail by the undersigned. This review consisted of checking each proposed work item to verify that it was a requirement of the modification scope. Also, the proposal was checked for reasonableness, omissions and/or duplications, math errors, takeoff quantity errors, unit prices and markups. Adequate cost and pricing data was provided. This review resulted in the following prenegotiations objectives:

1. Pre-Award Costs. The contractor's proposal includes requesting reimbursement for costs incurred prior to award of the contract. These costs total approximately \$258K.

Since there was no contract, there is no obligation by the Government to pay for any costs incurred by the contractor in seeking this work. The Government did not "knock on the offeror's door" and request that they perform work or incur costs in order to seek this contract. This contract was openly advertised and any firm wanting to submit a proposal was free to do so. There was no guarantee of payment to any firm submitting a proposal. Indeed, the solicitation could be cancelled and no contract awarded at any time during advertisement and review.

2. Suspension of Work. The Contracting Officer, James Opitz, sent ARC a letter on 14 April 2000 informing the contractor that there was a protest on the award of the contract. This letter also directed the contractor not to perform any work or incur any costs. This direction was ignored by the contractor's designer, Edward J. Cass and Associates.

No costs should be paid for work that occurred between the date of the Contracting Officer's April 14, 2000 letter not to incur cost and not to perform work and the termination date, with the exception of the reopening of discussions as discussed above. The blatant disregard of the written direction of the Contracting Officer to suspend work and to not incur costs cannot be excused. Please refer to FAR 52.243-1(e), the "Changes" clause of the contract.

These costs total approximately \$324K.

Figure C-15 (Cont'd.)

3. Late Termination Notice – Edward J. Cass & Associates. In Edward J. Cass and Associates' proposal, prepared by his attorneys on 29 November 2000, they indicated that ARC did not notify Cass of the termination until 12 September 2000. The termination letter was signed on 17 August 2000. Therefore, the termination costs for Cass should not begin until the 12 September date.

4. Overhead. The contractor is requesting overhead at the rate of 16%. ARC's attorney has no justification for his proposed 16% overhead rate other than they had lost anticipated work due to this termination. I contacted the cognizant DCAA office in San Diego, California and spoke to the Senior Auditor Mike Russell. Mr. Russell had audited ARC for a Corps of Engineers contract in Montana in July 1999. During that audit ARC reduced its home office overhead rate from 15% to 10%. Based on the lack of justification from ARC and the audited rate from DCAA, the overhead rate for this settlement should be reduced from 16% to 10%. The 10% rate was not questioned by the DCAA.

4. Profit. The contractor is requesting 18% profit due to the following, as stated by Bruckner's cover letter:

"ARC is requesting the maximum profit allowable because of the high risk associated with this CONTRACT. The work product and pricing of ARC and its architect, CASS, were disclosed to a major competitor. This disclosure seriously hampers ARC from submitting a competitive bid on the replacement project as Atherton has a distinct advantage after the disclosure of ARC's pricing and winning design."

None of these statements are moot to the profit that would be reasonable on this termination. This termination, like most, will be settled on a "Total Cost Basis." The contractor will be reimbursed all of its allowable costs associated with this project. There is no risk whatsoever. Also, as I understand it, the requirements for the follow-on contract are different from those of this solicitation so a new design should be prepared by any and all offerors on the new procurement. The disclosure of the architectural design should have no effect on this contractor if he chooses to submit a proposal for the Phase 7 contract. Based on this, the typical termination profit rate of 10% should be used for costs incurred.

#### **INDEPENDENT GOVERNMENT ESTIMATE**

An independent Government estimate was prepared by the undersigned on January 22, 2001. The amount of this estimate is \$192,187.53 and was based on going through all the contractor's accounting data and calculating the costs incurred after award of the contract on March 15, 2000 and prior to the suspension of work letter on April 14, 2000. It also includes costs incurred by ARC during the amendment 0006 discussion as well termination costs, beginning on September 12, 2000 for Cass (the date they stated they received the termination notice) and August 17, 2000 for ARC.

#### **AUDIT**

Due to the time constraints of trying to reach a settlement prior to award of the follow-on contract, this modification will issue with the final price subject to audit.

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**TIME**

Since this contract was terminated, no change in the contract time is required.

SAMPLE

Date: 22 January 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-15 (Cont'd.)

**PRENEGOTIATION OBJECTIVES MEMORANDUM**  
FAMILY HOUSING REPLACEMENT, PHASES 6 & 7  
MINOT AFB, NORTH DAKOTA

**Contract DACA05-00-C-0003**  
**Modification R00006**  
**Final Termination Settlement**

American Renovation & Construction Company  
San Diego, CA

The following negotiation objectives follow the same order as they were presented in the Proposal Analysis.

**1. Pre-Award Costs.**

Delete all pre-award costs.

**2. Suspension of Work.**

The costs incurred between 14 April 2000, when Contracting Officer James Opitz sent ARC a letter informing them there was a protest on the award of the contract and the date they acknowledged receipt of the termination should be deleted. The costs incurred to prepare the new proposal requested by amendment 0006 should be allowed since it was an action requested in writing by the then current Contracting Officer.

**3. Late Termination Notice – Edward J. Cass & Associates.**

Since in Edward J. Cass and Associates' proposal they indicated that they did not receive the termination notice until 12 September date, their termination settlement costs should begin at that time.

**3. Overhead.**

Reduce the contractor's requested overhead from their proposed of 16% to the recently DCAA audited rate of 10%.

**4. Profit.**

Reduce the contractor's requested 18% profit to a more reasonable 10% typically used in termination settlements.

Date: 22 January 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
Date: 22 January 2001	Prepared By: <b>LAWRENCE C. JACKSON, PE</b> Chief, Office Engineering Branch	SIGNATURE:

Figure C-15 (Cont'd.)

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**PRICE NEGOTIATIONS MEMORANDUM**  
FAMILY HOUSING REPLACEMENT, PHASES 6 & 7  
MINOT AFB, NORTH DAKOTA  
**Contract DACA05-00-C-0003**  
**Modification R00006**  
**Final Termination Settlement**  
American Renovation & Construction Company  
San Diego, CA

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All negotiations were held via telephone and concluded on 9 March 2001. The parties in the negotiations were:

<u>Organization/Location</u>	<u>Name</u>	<u>Title</u>	<u>Phone No.</u>
American Renovation & Construction Company San Diego, CA	William Bruckner	Attorney for ARC	(858)565-0813
Corps of Engineers Rapid City, SD	Mark Mailander	Area Engineer	(605)341-3169
Corps of Engineers Rapid City, SD	Bret Budd	Civil Engineer/ Lead Negotiator	(605)341-3169

During negotiations, the contractor revised his proposal from \$773,980.86 to a lump sum agreement of \$500,000.00. In accordance with FAR 49.201(b), this is a settlement by agreement. The individual elements of costs or profit are not segregated out in this settlement. A lump sum agreement was necessary since an agreement on the individual cost elements could not be reached.

The following is a history of negotiations, taken mainly from e-mails between the contractor's attorney and myself as well as status updates by Mark Mailander. This history will demonstrate the number conversations and negotiation attempts to reach a settlement and the stalemate that ensued. The only alternative to lump sum agreement would have been a unilateral judgment by determination, which will most assuredly be followed by claims and legal actions. It became clear that if a reasonable lump sum agreement could be reached with ARC, it would be in the best interest of the Government.

As part of the settlement, the contractor withdrew his Freedom of Information Act (FOIA) request. This FOIA request was a fishing expedition by the contractor to find items that would show that the Government acted arbitrary and capricious and therefore breached the contract. It is doubtful, in the Office of Counsel opinion, that the contractor would prevail in proving this, but it would have, without a doubt, tied up significant Government resources and could have pushed the Government into a more costly settlement at a later date. If the contractor did convince the courts that this was a breach of contract instead of a termination, the contractor could have been entitled to anticipated profits on the entire contract amount, which could possibly have totaled in excess of three million dollars if the

Figure C-15 (Cont'd.)



court would take into account the award of the Phase 7 options would increase the contract to over \$27M.

Negotiations were kicked off by a telephone call between Anthony Jemison, vice-president of ARC, Mark Mailander, the Black Hills Area Engineer and myself. This phone call was to introduce ourselves to the contractor as the office that would be handling the termination settlement. We also requested that Mr. Jemison try to give us a rough-estimate at what his termination proposal would be so that we could de-obligate the remainder of the contract. Overall, this conversation went very well and Mr. Jemison seemed to be very cooperative. ARC had not gone through a termination for convenience before, so Mr. Jemison was given a brief description of the process involved. It was agreed that I would provide him with additional information on terminations, as well as the forms he would need to us. This was accomplished in the following e-mail.

On October 17, 2000, Contracting Officer authority was transferred from Sacramento District back to Omaha. Sacramento originally awarded the contract and then transferred CO authority to Omaha for construction of the contract. When the first protest was received, CO authority was transferred back to Sacramento to allow them to resolve the protest. The resolution by Sacramento was to terminate the contract. Once that was accomplished, CO authority was sent back to Omaha for settlement of the termination.

On October 20, 2000, COE serial letter 00-0003-03 was sent to the contractor to formally notify the contractor that the Black Hills Area Office would be handling the termination settlement. The letter also requested a settlement conference and listed the items to be covered in the conference, in accordance with FAR 49.105(c). The contractor was also notified that the Government will issuing a modification on, or about, November 1, 2000 to reduce the contract funds to \$250,000. The contractor was told that if he did not agree that \$250,000 would be adequate to cover the termination settlement that it could be discussed during the conference.

The contractor's termination proposal of \$773,980.86 was received on December 7, 2001. The receipt of the proposal was followed up by the following messages between myself and ARC's attorney, Bill Bruckner.

As stated above, the onus of justifying additional reimbursement would fall upon Bruckner. Basically, these additional expenses would involve paying for pre-award costs, costs incurred after award, but without NTP, and costs incurred between the time the suspension of work letter was issued by Jim Opitz and the termination acknowledgement date. The costs incurred between award and the suspension of work letter were generally agreed to be payable, but the other costs would be the bone of contention for the remainder of the negotiations.

It was agreed with Bill Bruckner (after confirmation with the Office of Counsel) that all payments would be made with a paper check made out to ARC but sent to Bill Bruckner's address and to his attention. Mr. Bruckner would then have to have ARC sign the check over to him and he would deposit it into a trust account that he had established for this termination settlement. Bill Bruckner's address is listed as address #3 in CEFMS.

The following shows the last status update for the end of 2000.

Figure C-15 (Cont'd.)

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Later on the 8<sup>th</sup>, Bruckner called to say that he had convinced Tony Dethloff of ARC to accept the \$500,000 offer and that they would get an agreement with Cass.

I received an overnight package on March 9, 2001 from Bill Bruckner that included a pay request for \$461,823.89, to bring the total payments to \$500,000. Also included was a copy of modification P00004 with an original signature (see details below) and the MOU for the termination settlement that I had faxed to him with Bruckner's original signature.

After reviewing the MOU, I found that Bill had amended my fax to include additional language at the end of paragraph (b)(5). Paragraph (b)(5) stated in its original form:

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

The language added to the end of the paragraph by Bruckner was:

"subject to signed settlement agreement between CASS and ARC and in accordance with its terms. IF signed settlement agreement no consummated by CASS and ARC, ARC reserves the right withhold funds from CASS pending settlement."

After reviewing this change to the terms of the settlement, I contacted Bill Bruckner and told him that we disagreed with its language since it would violate the Prompt Payment Act requirement to disburse money earmarked for a subcontractor within 10 days and not hold it. Bruckner was offered that the Government would hold the money, instead of him in his trust account, and once settlement was reached with Cass he could request payment and we would pay him at that time. Bruckner responded that he had just gotten word back from Cass's attorney and Cass agreed to the terms offered by ARC.

Since agreement was reached between ARC and Cass, Bruckner agreed to withdraw his revision to (b)(5) and he faxed that page 2 of the MOU for inclusion with his signed MOU that was previously sent.

#### **Modification P00004**

According to a later account by Bill Bruckner, the president of ARC, Tony Dethloff, threw away the original SF-30 for modification P00004 to avoid the possibility of anybody signing the modification and sending it back to the Government. A copy of the SF-30 for P00004 that Bruckner had kept was signed by Mr. Dethloff, and sent back with the signed Memorandum of Understanding for the termination settlement.

#### **Pay Estimate #2**

Pay estimate was processed March 9, 2001 for \$460,823.89. This brings the total paid to date to

Figure C-15 (Cont'd.)

\$499,000. Once this termination settlement proposal is signed, the final pay estimate will be issued in the amount of \$1,000.00 to close out the contract.

#### **FINAL GOVERNMENT ESTIMATE**

A revised Government estimate was prepared by the undersigned on the morning of March 7, 2001 to determine the greatest amount the Government could justify owing the contractor for work done, if some of the difference were compromised, such as paying for pre-award costs but not paying for costs incurred during the suspension of work,. This estimate, in the amount of \$501,917.75, is slightly greater than the contractor's proposal of \$500,000.00. This indicates that the contractor's proposed lump sum settlement could be accepted as reasonable.

#### **TIME**

Since this contract was terminated for the convenience of the Government, no change in contract time is necessary or required.

#### **AUDIT**

Since this is a settlement by agreement, an audit of the contractor's proposal will be futile. It is requested that a waiver of the audit be prepared by Contracting Division and signed by the Contracting Officer, if required.

#### **MEMORANDUM OF UNDERSTANDING**

At the conclusion of negotiations on 7 March 2001, a memorandum of understanding was prepared and signed by the Government's negotiator, Bret Budd. This memorandum was faxed to the contractor. The contractor's attorney, William L. Bruckner, signed the MOU and overnighted it back to Black Hills Area Office on 8 March 2001.

#### **THE NEGOTIATED SETTLEMENT.**

The settlement of this termination is made pursuant to FAR 49.201, which states:

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

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(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest. Based on the guidance outlined above, and taking into account the circumstances involved in the protest, the impacts to the Government and the contractor, and all the pertinent facts, the settlement of \$500,000.00 is recommended for approval by the Contracting Officer.

SAMPLE

Date: March 14, 2001	Prepared By: <b>BRET T. BUDD, PE</b> Civil Engineer/Negotiator	SIGNATURE:
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Figure C-15 (Cont'd.)

13. Termination for Default. Unlike a Termination for Convenience, ACO involvement in a Termination for Default is limited. The CO performs a majority of the actions required in a Termination for Default. Although not in the lead, the ACO does play a major support role in the process.

a. To be legally sufficient, default can be affected only on the basis of a written notice and decision of the CO having been provided to the contractor. Prior to issuing a termination notice, the CO must prepare a determination and findings. The CO will likely call upon the ACO for support and backup documentation. The ACO should be prepared to provide any support required. The ACO should take care to document all actions associated with the termination. The CO must consider the factors listed in FAR 49.402-3(f) in considering whether to terminate. One of the most important factors to consider is the specific failure and the excuses for the failure. It is very important to consider any and all claims for delay.

b. FAR 249-10 provides that following the issuance of a written notice of termination, the Government may take over the work and complete the contract or otherwise, and may take possession of and use any materials, appliances and plant on the work site necessary for completing the work. Therefore, before issuing a notice of termination, the CO should determine what materials, appliances and plant on the site, belonging to the contractor, will be needed to complete the work. This information should be conveyed to the contractor in the notice of termination. In making his decision regarding continued use of the contractor's property, the CO should keep in mind that the use of the contractor's property is not free and any such reasonable costs may be deducted from any damages the Government incurs as a consequence of the termination. The CO should do what is in the best interest of the Government. Further, the Government must be careful to protect the rights of the Surety providing bonding for the defaulting contractor. The Surety must be given opportunity to elect to take over and complete the remaining contract work. If the Surety does elect to take over and complete the remaining work, the Government should enter into a formal takeover agreement with the Surety. It is also important to notify the Surety of the potential for default in a timely manner. Further, extra care should be made by the COR to protect retained percentage, and other outstanding contractor payments for use by the Surety to complete the work.